

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND (Providence)**

In Re: Thomas D. Gammino	Case Number 1:18-bk-11049 Chapter 7
-----------------------------	--

DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE FOR RESIDENTIAL ACCREDIT LOANS, INC., MORTGAGE ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2005-QA7
AND/OR ITS SUCCESSORS AND ASSIGNS,

Movant.

v.

THOMAS D. GAMMINO,

Debtor.

**MOTION OF DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE FOR
RESIDENTIAL ACCREDIT LOANS, INC., MORTGAGE ASSET-BACKED PASS-
THROUGH CERTIFICATES, SERIES 2005-QA7 FOR RELIEF FROM THE
AUTOMATIC STAY AND FOR LEAVE TO FORECLOSE MORTGAGE AND
MEMORANDUM IN SUPPORT THEREOF**

Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-QA7 (hereinafter referred to as the “Movant”), a secured creditor, hereby moves this Court for Relief from the Automatic Stay pursuant to Bankruptcy Rules 4001 and 9014 and 11 U.S.C. Section 362(d) and for leave to foreclose a certain mortgage encumbering the property owned by the Debtor, known as *2188 Tower Hill Road, North Kingstown, RI 02852*. In support of this Motion, Movant states as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 and 28 U.S.C. 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code (the “Bankruptcy Code”). This proceeding is a “core” proceeding as this term is defined in the Code.
2. On June 15, 2018, Thomas D. Gammino (hereinafter referred to as the “Debtor”) filed a voluntary Chapter 7 Petition in Bankruptcy.
3. Movant is the current holder of a certain mortgage given by the Debtor to Mortgage Electronic Registration Systems, Inc. acting solely as a nominee for Dream House Mortgage Corporation in the original principal amount of \$1,000,000.00 dated February 8, 2005 and

recorded with the Town of North Kingstown Land Evidence Records in Book 1970, Page 313 (the "Mortgage"). A copy of the Mortgage is attached hereto as Exhibit A.

4. The Mortgage secures a promissory note of even date and original principal amount given by the Debtor to Dream House Mortgage Corporation (the "Note") of which Movant is the current holder. A copy of the Note is attached hereto as Exhibit B.
5. Mortgage Electronic Registration Systems, Inc. assigned the Mortgage to Deutsche Bank Trust Company Americas as Trustee for RALI 2005QA7 by assignment dated February 21, 2012 and recorded with the Town of North Kingstown Land Evidence Records in Book 2629, Page 66, a copy of which is attached hereto as Exhibit C. A corrective assignment from Mortgage Electronic Registration Systems, Inc. acting solely as a nominee for Dream House Mortgage Corporation to the Movant dated June 23, 2015 was recorded with the Town of North Kingstown Land Evidence Records in Book 2920, Page 186, a copy of which is attached hereto as Exhibit D. The current loan servicer for the Movant is Ocwen Loan Servicing, LLC.
6. The Mortgage encumbers real property known as *2188 Tower Hill Road, North Kingstown, RI 02852* (hereinafter referred to as the "Property"). Copies of the Mortgage and Note are attached hereto as Exhibit A and Exhibit B respectively. The Mortgage is in first lien position. Aside from the Property, there is no other collateral securing the Debtor's obligation to Movant.
7. The Debtor has defaulted on the Note and Mortgage by failing to make regular payments to Movant.
8. As of July 23, 2018, the balance due Movant on the Note was approximately \$868,459.42 (may not include negative escrow balances or recent escrow advances). The full amount of the Movant's claim together with allowable post-petition interest, reasonable attorney fees, court costs, and other recoverable expenses is secured by the Mortgage.
9. According to the Debtor's Schedules, the fair market value of the Property is \$896,200.00. Accepting the Debtor's valuation for purposes of this motion only, the liquidation value of the Property is \$846,767.48 based upon a usual and customary broker's commission of \$44,810.00 (5% of stated fair market value), deed stamps of \$4,122.52, and \$500.00 in miscellaneous estimated closing costs.
10. As of July 23, 2018, the Debtor's mortgage account is due for the April 1, 2017 contractual due date. The current monthly payment is \$5,267.09, subject to such subsequent adjustment as may be specified in the note.
11. As of July 23, 2018, Debtor owed Movant a total contractual arrearage of \$83,881.65 calculated as follows:

- 8 monthly payments (04/01/17 - 11/01/17) at \$5,049.89/mo.	\$40,399.12
- 8 monthly payments (12/01/17 - 07/01/18) at \$5,267.09/mo.	\$42,136.72
- Property Inspection Fees	\$309.00
- Property Valuation Fees	\$110.00
- Foreclosure Fees/Costs	\$977.06
- Less Suspense Balance	(\$50.25)

Total Contractual Arrearage \$83,881.65¹

12. In addition to the Mortgage to Movant, there are outstanding liens on the Property as follows:

<u>Lien</u>	<u>Type</u>	<u>Amount</u>	<u>Book/Page</u>
Movant	Mortgage	\$868,459.42	1970/313
RI Dept. of Employment & Training	Lien	\$5,600.00	2704/248
Specialized Loan Servicing	Junior Mortgage	\$386,017.00	1971/1
Michael C. Kent	Junior Mortgage	\$50,000.00	2786/15
The Law Offices of Michael A. Kelly, PC	Junior Mortgage	\$350,000.00	2582/40
Ford Motor Credit Co. LLC d/b/a Land Rover Capital Group	Execution	\$9,507.36	2560/222
Capital One Bank USA, N.A.	Execution	\$3,782.15	2849/310
Capital One Bank USA, N.A.	Execution	\$2,110.08	2849/312
Jedi Enterprises Electrical Services, Inc.	Execution	\$4,385.62	3129/51

The total of all liens on the Property is approximately \$1,679,861.63.

13. Movant is entitled to Relief from the Automatic Stay for cause pursuant to Section 362(d)(1) of the Code inasmuch as the Debtor has failed to make regular monthly mortgage payments to the Movant in violation of the terms of the Note and Mortgage.

¹ As of the date of this motion, Movant has incurred approximately \$750.00 in attorney fees and \$181.00 in attorney costs in connection with this motion. This amount will increase if counsel for Movant performs additional services for Movant in connection with this motion.

14. Movant is entitled to Relief from the Automatic Stay and leave to foreclose its mortgage pursuant to 11 U.S.C. Section 362(d)(2) in that the Debtor has no equity in the Property above and beyond the Property's liquidation value and the Property is not necessary to an effective reorganization of the Debtor.
15. Ocwen Loan Servicing, LLC services the underlying mortgage loan and note for the property referenced in this Motion for Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-QA7 (hereinafter referred to as the "Noteholder") and is entitled to proceed accordingly. Should the Automatic Stay be lifted and/or set aside by Order of this Court or if this case is dismissed or if the Debtor obtains a discharge and a foreclosure action is commenced or recommenced, said foreclosure action will be conducted in the name of the Noteholder. The Noteholder has the right to foreclose because Noteholder is the original mortgagee or beneficiary or assignee of the security instrument for the referenced loan. Noteholder directly or through an agent has possession of the promissory note and the promissory note is either made payable to Noteholder or has been duly endorsed.
16. **Within fourteen (14) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail or other excepted means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.**

WHEREFORE, Movant requests that this Honorable Court:

- (a) Grant Movant Relief from the Automatic Stay pursuant to 11 U.S.C. Section 362(d) and for leave to Foreclose Mortgage, allowing Movant, its successors or assigns to foreclose said mortgage (including, at its sole option, leave to accept a deed-in-lieu of foreclosure from the Debtor, their heirs, successors, assigns or transferees); and for it or a third-party purchaser to prosecute summary process proceedings to evict any persons residing in the Property.
- (b) In the alternative, order Debtor to provide Movant with adequate protection of its claim; and
- (c) Grant such other Relief as this Honorable Court may deem just.

Date: July 27, 2018

Respectfully submitted,
Deutsche Bank Trust Company Americas, as Trustee for
Residential Accredit Loans, Inc., Mortgage Asset-
Backed Pass-Through Certificates, Series 2005-QA7
By its attorney,

/s/ Catherine V. Eastwood

Catherine V. Eastwood, Esquire

RI# 6406

Korde & Associates, P.C.

900 Chelmsford Street, Suite 3102

Lowell, MA 01851

Tel: (978) 256-1500

ceastwood@kordeassociates.com

bankruptcy@kordeassociates.com